

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
PREMIUM STANDARD FARMS, INC.,)	
and CONTI-GROUP COMPANY, INC.,)	
)	
Defendants.)	
)	

PETITION FOR PRELIMINARY INJUNCTION,
PERMANENT INJUNCTION, AND CIVIL PENALTIES

COMES NOW, Plaintiff, State of Missouri, and for its petition against defendants, Premium Standard Farms, Inc. and Conti-Group Company, Inc., alleges and states that:

1. Jeremiah W. (Jay) Nixon is the duly elected, qualified, and acting Attorney General of the State of Missouri.

2. Premium Standard Farms, Inc., is a foreign corporation authorized to do business in Missouri. It has its principal place of business and registered agent in Kansas City, Jackson County, Missouri. Conti-Group Company, Inc. is a foreign corporation authorized to do business in Missouri. It owns a majority interest in Premium Standard Farms, Inc. The defendants shall be referred to herein as “PSF” and “CGC” respectively. The defendants shall be referred to jointly as “the company.”

3. Venue is proper under § 644.076.1, RSMo.

4. The company owns and operates several Class IA concentrated animal feeding operations (CAFOs) in Missouri as that term is defined in 10 CSR 20-6.300(1)(B)8. At PSF's operating locations, thousands of hogs are confined in confinement houses where they are fed and watered. CGC also owns Class IA CAFOs in Missouri.

5. PSF and CGC operate the respective CAFOs under authority granted by the State in a separate operating permit for each facility. Under their permits and state and federal law, PSF and CGC are expressly prohibited from discharging animal waste to waters of the state as defined in § 644.016(25), RSMo 2000, except in very limited circumstances not applicable here.

6. Under its state operating permits, PSF is permitted to confine more than nine hundred thousand (900,000) hogs in North Missouri. CGC is authorized to confine more than two hundred thousand (200,000) hogs in North Missouri.

7. Based on information and belief, PSF and CGC either jointly or cooperatively manage and control the environmental aspects of the Missouri operations described above.

8. At some CAFOs, CGC provides the animals and PSF provides the labor. "Labor" means all aspects of animal husbandry from breeding and gestation to slaughter. This includes providing medical care, feed, water, shelter, and waste-handling and disposal.

9. The confined hogs excrete manure and urine. Water is used to flush the manure and urine from the confinement houses to nearby lagoons for storage. The company's North Missouri hog production operation is designed to store and land apply more than seven hundred and fifty million gallons of animal waste per year.

10. Under its state operating permits, PSF is permitted to maintain one hundred and thirty-one (131) lagoons in which to store animal waste at its various operating locations. CGC also is permitted to maintain numerous lagoons in which to store animal waste.

11. Solids contained in the flush water, hereinafter referred to as animal waste, settle in the lagoons and the liquid is disposed of by land application. The settled sludge is ultimately spread on the land as well.

12. In this context, "land application" means the spray irrigation or subsurface injection of the animal waste on land within certain limits prescribed by regulation and permits issued by MDNR.

13. Under its state operating permits, PSF is permitted to land apply animal waste on more than forty-five thousand (45,000) acres in North Missouri. CGC also is permitted to land apply waste on vast acreage of land in Missouri.

14. The number of confined hogs is directly related to the amount of waste generated at a CAFO. The amount of waste generated at a CAFO also is directly related to the acreage required for environmentally sound land application.

15. The confined hogs produced by the company generate huge volumes of animal waste.

16. Pursuant to a consent judgment entered on August 3, 1999 in prior litigation between the parties to this action, PSF and CGC are obligated to develop and implement Next Generation Technology at their Missouri operations consistent with the terms of that decree. This pleading does not allege any violation of that decree.

COUNT I -- PSF'S VIOLATIONS OF MISSOURI CLEAN WATER LAW

17. Plaintiff incorporates by reference paragraphs 1-16 as though set forth fully herein.

18. On or about August 5, 1999, at or near its Wolf #4 CAFO, PSF put or placed a water contaminant, animal waste and its component parts, in a place where it was reasonably certain to cause pollution to waters of the state when wastewater was discharged from an aboveground irrigation line and onto the property of Mr. Douglas Cullen in violation of several provisions of the applicable operating permit and §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

19. On or about August 26, 1999, and again on August 18, 2000, at or near its Locust Ridge CAFO, PSF put or placed a water contaminant, organic matter from the decomposition of dead hogs and its component parts, in a place where it was reasonably certain to cause pollution to waters of the state when said organic matter was discharged or released from a dead animal facility onto the surface of the ground in violation of

several provisions of the applicable operating permit and §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

20. On or about September 8, 1999, at or near its Whitetail CAFO, PSF put or placed a water contaminant, animal waste and its component parts, in a place where it was reasonably certain to cause pollution to waters of the state when wastewater was discharged from a center pivot onto private property owned by Mr. Robert Ray and not approved for land application in violation of several provisions of the applicable operating permit and §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

21. On or about July 10, 2001, at or near its Summers Multiplier CAFO, PSF put or placed a water contaminant, animal waste and its component parts, in a place where it was reasonably certain to cause pollution to waters of the state when wastewater was discharged from a secondary containment structure in violation of several provisions of the applicable operating permit and §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

22. On or about July 10, 2001, the animal waste entered a freshwater pond, a part of the waters of the state as defined in § 644.016(25), RSMo 2000.

23. The animal waste from the July 10, 2001 spill remained in the freshwater pond for more than one day.

24. On or about July 11, 2001, at or near its Somerset CAFO, PSF put or placed a water contaminant, animal waste and its component parts, in a place where it was

reasonably certain to cause pollution to waters of the state when wastewater was discharged from a split in an aboveground irrigation line in violation of several provisions of the applicable operating permit and §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

25. On or about July 11, 2001, the animal waste entered an unnamed tributary to the West Fork of Medicine Creek, a part of the waters of the state as defined in § 644.016(25), RSMo 2000.

26. The animal waste from the spill may have remained in the unnamed tributary for more than one day.

27. On or about July 17, 2001, at or near its Somerset CAFO, PSF put or placed a water contaminant, animal waste and its component parts, in a place where it was reasonably certain to cause pollution to waters of the state when wastewater was discharged from an aboveground irrigation line in violation of several provisions of the applicable operating permit and §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

28. On or about July 17, 2001, the animal waste entered an unnamed tributary to the West Fork of Medicine Creek, a part of the waters of the state as defined in § 644.016(25), RSMo 2000.

29. The animal waste from the July 17, 2002 spill may have remained in the unnamed tributary for more than one day.

30. On or about July 25, 2001, at or near its Whitetail CAFO, PSF put or placed a water contaminant, animal waste and its component parts, in a place where it was reasonably certain to cause pollution to waters of the state when many gallons of animal waste was released or discharged from a secondary containment facility or other conveyance in violation of §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

31. On or about July 25, 2001, animal waste entered an unnamed tributary to North Blackbird Creek, a part of the waters of the state as defined in § 644.016(25), RSMo 2000.

32. The July 25, 2001 spill caused a fish kill on the unnamed tributary to North Blackbird Creek.

33. The animal waste from the July 25, 2001 spill remained in the unnamed tributary to North Blackbird Creek for more than one day. It caused or contributed to a violation of the state water quality standard for ammonia under 10 CSR 20-7.031.

34. On or about July 31, 2001, at or near its Whitetail CAFO, PSF put or placed a water contaminant, animal waste and its component parts, in a place where it was reasonably certain to cause pollution to waters of the state when PSF's agent or agents improperly land applied excessive gallons of animal waste with a "honey wagon" in violation of several provisions of the applicable operating permit and §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

35. On or about July 31, 2001, the animal waste entered an unnamed tributary of Shoal Creek, a part of the waters of the state as defined in § 644.016(25), RSMo 2000.

36. The July 31, 2001 spill caused a fish kill on the unnamed tributary of Shoal Creek.

37. The animal waste from the July 31, 2002 spill remained in the unnamed tributary of Shoal Creek for more than one day.

38. On or about August 3 and 4, 2001, at or near its Whitetail CAFO, PSF put or placed a water contaminant, animal waste and its component parts, in a place where it was reasonably certain to cause pollution to waters of the state when PSF's agent or agents improperly land applied excessive gallons of animal waste with a "honey wagon" on or about July 31, 2001 continued to enter waters of the state in violation of several provisions of the applicable operating permit and §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

39. On or about August 6, 2001, at or near its Green Hills CAFO, PSF put or placed a water contaminant, animal waste and its component parts, in a place where it was reasonably certain to cause pollution to waters of the state when a travelling gun land application implement malfunctioned in violation of several provisions of the applicable operating permit and §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

40. On or about August 6, 2001, the animal waste entered an unnamed tributary of Spring Creek, a part of the waters of the state as defined in § 644.016(25), RSMo 2000.

41. The August 6, 2001 spill caused a fish kill on the unnamed tributary of Spring Creek.

42. The animal waste from the August 6, 2001 spill may have remained in the unnamed tributary of Spring Creek for more than one day. PSF failed to timely notify the Missouri Department of Natural Resources of this spill in violation of the applicable permit.

43. On or about July 8, 9, 13, 14, 15, 16 and/or 17, 2001, at or near its Whitetail CAFO, PSF put or placed a water contaminant, animal waste and its component parts, in a place where it was reasonably certain to cause pollution to waters of the state when PSF miscalculated the correct nitrogen rate and over applied excessive amounts of waste on a fallow field owned by Mr. Joseph Ream in violation of several provisions of the applicable operating permit and §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

44. On or about July 3, 5, 8, and/or 9, 2001, at or near its Whitetail CAFO, PSF's agents failed to properly land apply waste on property owned by Mr. Bud Stottlemire causing an overapplication of nitrogen in violation of several provisions of

the applicable operating permit and §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

45. On or about May 21, 2002, at or near the Peach/Perkins CAFO, PSF put or placed a water contaminant, animal waste and its component parts, in a place where it was reasonably certain to cause pollution to waters of the state when a pipe being used to transfer waste between lagoons failed and many gallons of animal waste entered waters of the state in violation of §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

46. PSF failed to properly supervise the transfer of waste between lagoons on May 20-21, 2002. Proper supervision could have prevented the incident or mitigated its impact.

47. The animal waste from the May 21, 2002 spill entered and remained in an unnamed tributary of Little Medicine Creek and an oxbow lake, waters of the state as defined in § 644.016(25), RSMo 2000, for more than one day.

48. The May 21, 2002 spill caused a fish kill.

49. Animal waste and its constituent parts have the potential to alter the physical, chemical or biological properties of the receiving waters and thereby cause pollution as defined in § 644.016(9), RSMo 2000.

50. When introduced to receiving waters, animal waste and its constituent parts are reasonably certain to create a nuisance or render the receiving waters harmful,

detrimental or injurious to public health, safety or welfare, or to legitimate beneficial uses, or wild animals or aquatic life.

51. Animal waste and its constituent parts can enter waters of the state, including surface waters, ground waters and subsurface waters, upon land application, in connection with surface runoff from land application sites, or upon escape from containment caused by system failure or other circumstances.

52. The company has not completed a waste characterization study that defines the concentrations of the various elements and compounds in the animal waste that it land applies. Consequently, the company's animal waste may cause unknown water quality impacts when it enters the waters of the state.

53. PSF is liable for the investigative costs of MDNR and MDC, the value of fish killed, the costs of establishing the violations alleged in this petition and other natural resource damages related to the spills.

54. PSF is subject to a \$10,000.00 per day per violation civil penalty for violating the Clean Water Law under § 644.076.1, RSMo 2000.

55. Plaintiff has no adequate remedy at law.

56. The unlawful acts of PSF and CGC are of such a continuous nature, and in such conscious disregard for the protection of the soils and waters of the State of Missouri, that plaintiff believes that PSF and CGC will continue to violate the Clean Water Law unless restrained and enjoined by the court.

WHEREFORE, plaintiff prays for this court's order that PSF is and shall be enjoined from illegally disposing of waste by discharging it to waters of the state, that PSF is and shall be enjoined to comply with the Missouri Clean Water law, its implementing regulations and all applicable operating permits, that PSF shall cease and desist from breeding swine, by artificial insemination or otherwise, until a court-approved waste management plan is implemented by PSF, that PSF shall not land apply animal waste without the consent of neighboring landowners adjacent to the proposed land application site unless and until PSF shall have completed a suitable waste characterization satisfactory to the Missouri Department of Natural Resources, that PSF shall pay the maximum penalties provided for by law for each day of each violation, that PSF shall pay the State's costs of establishing said violations, and for such other relief as this court deems just and proper.

**COUNT II—THE COMPANY'S VIOLATIONS
OF THE MISSOURI CLEAN WATER LAW**

57. Plaintiff incorporates by reference paragraphs 1-56 as though set forth fully herein.

58. CGC owns the Scott/Colby CAFO and the real estate on which it exists.

59. CGC owns the animals confined at the Scott/Colby CAFO.

60. CGC owns the waste generated by the animals confined at the Scott/Colby CAFO.

61. PSF provides management and labor with respect to the facilities, land, and animals confined at the Scott/Colby CAFO.

62. On or about October 31, 2000, at or near the Scott/Colby CAFO, the company put or placed a water contaminant, animal waste and its component parts, in a place where it was reasonably certain to cause pollution to waters of the state when many gallons of animal waste entered waters of the state in violation of §§ 644.051.1(1), (2) and (3), and § 644.076.1, RSMo 2000.

63. The Halloween 2000 spill caused a fish kill.

64. The animal waste from the Halloween spill entered and remained in an unnamed tributary of Racoon Creek for more than one day.

WHEREFORE, plaintiff prays for this court's order that the company is and shall be enjoined from illegally disposing of waste by discharging it to waters of the state, that the company is and shall be enjoined to comply with the Missouri Clean Water law, its implementing regulations and all applicable operating permits, that the company shall cease and desist from breeding swine, by artificial insemination or otherwise, until a court-approved waste management plan is implemented by the company, that the company shall not land apply animal waste without the consent of neighboring landowners adjacent to the proposed land application site unless and until the company shall have completed a suitable waste characterization satisfactory to the Missouri Department of Natural Resources, that the company shall pay the maximum penalties

provided for by law for each day of each violation, that the company shall pay the State's costs of establishing said violations, and for such other relief as this court deems just and proper.

**COUNT IV–ACTUAL DAMAGES UNDER
MISSOURI CLEAN WATER LAW**

65. Plaintiff incorporates by reference paragraphs 1-64 as though set forth fully herein.

66. MDNR, the Missouri Department of Conservation (MDC) and the Missouri Attorney General's Office investigated the releases and fish kills. The State of Missouri consequently incurred costs investigating the releases and fish kills, and prosecuting this action. The State will incur additional costs prosecuting this action.

67. The fish killed and the costs of investigation and prosecution represent actual damages to the State and its citizens under § 644.096, RSMo 2000.

WHEREFORE, plaintiff prays for this court's order awarding actual damages and for such other relief as this court deems just and proper.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

William J. Bryan
Deputy Chief Counsel
Missouri Bar No. 37711
8th Floor, Broadway State Office Building
221 West High Street
P.O. Box 899
Jefferson City, MO 65102
573-751-8370

Attorneys for Plaintiff